

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CASSENS MILL CORP. and
CHARLES H. CASSENS
Keokuk County, Iowa**

ADMINISTRATIVE CONSENT
ORDER

NO. 2011-AQ- 08
NO. 2011-SW- 10

TO: Cassens Mill Corp.
Charles H. Cassens, Registered Agent
108 E. Ringgold Street
Sigourney, Iowa 52591

Charles H. Cassens
19292 HWY 92
Sigourney, Iowa 52591

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Charles Cassens and Cassens Mill Corp. for the purpose of resolving the air quality and solid waste disposal violations which occurred as a result of the demolition and disposal of a building located in Keswick, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Kurt Levetzow, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Phone: 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa

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Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Charles Cassens owns and operates Cassens Mill Corp. The company specializes in storing, selling, and processing grain.

2. On August 18, 2008, DNR Field Office 6 received a complaint alleging that a building had been demolished in Keswick, Iowa and that the demolition debris had been taken to a field owned by Charles Cassens. The complaint states that the debris had been burned and buried in the field. On August 21, 2008, Terry Jones, DNR Field Office 6, spoke to Mr. Cassens on the telephone regarding the complaint. Mr. Cassens stated that the building was a dilapidated structure and the roof had caved in. Mr. Cassens stated that he burned the wood portions of the building, but claimed that the remaining portions of the building had been disposed of at a landfill. Mr. Cassens stated he received permission from the city of Keswick to demolish and burn the building.

3. On September 3, 2008, DNR Field Office 6 issued Mr. Cassens a Notice of Violation letter for the violations discovered by DNR Field Office 6. The violations included Mr. Cassens' failure to conduct an asbestos inspection prior to the demolition of the building, as well as his failure to notify the DNR of the demolition. The violations also included the open burning of the building. The letter explained each of the regulations and included a copy of the regulations. The letter informed Mr. Cassens that future violations would likely result in further enforcement.

4. On August 17, 2009, DNR Field Office 6 received a complaint stating that a commercial building owned by Charles Cassens in Keswick, Iowa was being demolished by hand. The complaint stated that the building had been deemed unsafe to enter. The building was located at 122 Main Street (South Irons Street) in Keswick. On August 19, 2009, Kurt Levetzow, DNR Field Office 6, investigated the complaint and spoke to Mr. Cassens. Mr. Cassens confirmed that he owned the building; however the Keokuk County Assessor lists Cassens Mill Corp. as the owner of the building. During the investigation, Mr. Levetzow noted that some demolition activities had taken place. Mr. Levetzow observed a bucket truck from Sceary's Tree Service behind the building and Mr. Cassens stated the company had been hired to remove the top of the building. Mr. Levetzow told Mr. Cassens to stop the demolition until the DNR's asbestos coordinator could be notified. Mr. Levetzow also contacted the owner of Sceary's Tree Service and informed him to stop the demolition.

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5. On August 20, 2009, Marion Burnside, DNR asbestos coordinator, visited the demolition site in Keswick and collected samples from the building. The samples indicated that the roofing material contained 5% Chrysotile asbestos.

6. On December 23, 2009, DNR issued a Notice of Violation letter to Charles Cassens and Cassens Mill Corp. for the air quality violations discovered by Mr. Levetzow and Mr. Burnside in August 2009. The letter included the failure to thoroughly inspect the building prior to demolition; failure to notify the DNR of the demolition; failure to remove all asbestos containing material prior to demolition activities; failure to have a licensed supervisor on site during the demolition; and failure to seal all asbestos containing material in leak tight containers. The letter required that Cassens Mill Corp. hire an asbestos abatement contractor to clean up the debris and to properly complete the demolition. The letter also required that the waste shipment records for the clean-up be submitted to the DNR. The records were never received by the DNR.

7. On July 30, 2010, DNR Field Office 6 received a complaint stating that the same building from the August 2009 investigation was now being demolished and taken to a different location owned by Cassens Mill Corp. and Mr. Cassens.

8. On August 6, 2010, Mr. Levetzow and Mr. Jones investigated the complaint and noted that the building in Keswick had been completely demolished and hauled away. They met with Mr. Cassens and Mr. Cassens stated that his employees had taken the building down and disposed of some of the debris at two different locations owned by Cassens Mill Corp. and Mr. Cassens and the rest of the debris at the SEMCO Landfill. The field office personnel asked to see the other locations and Mr. Cassens denied this request, but told the field office personnel to return in a few days and he would take them to the locations. The field office personnel also asked for proof of proper disposal and Mr. Cassens stated he did not have any documents on the disposal yet. Mr. Levetzow told Mr. Cassens not to alter the piles at the locations reference above until DNR was able to see them.

9. On August 11, 2010, Mr. Cassens showed Mr. Levetzow the locations where the debris had been transported to. One area was a field located west of Sigourney, Iowa and the other area was an elevator site located at 22100 190th Avenue, Sigourney, Iowa. The elevator site is located southwest of Mr. Cassens' residence. Mr. Levetzow observed evidence of past open burning and burial of the remnants of the buildings. He observed areas where debris had been burned. In these areas there was some remaining charred debris. Additionally, Mr. Levetzow observed areas where the ground had been disturbed and spread over the rubble. Mr. Levetzow asked Mr. Cassens for the landfill receipts and Mr. Cassens was unable to provide them.

10. On August 17, 2010, DNR issued a Notice of Violation letter to Mr. Cassens for the violations observed by the field office in August 2010. The violations included improper solid waste disposal, open burning, and failure to comply with

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asbestos requirements. The letter informed Mr. Cassens that the matter was being referred for further enforcement.

11. On January 6, 2011, Mr. Levetzow returned to the elevator location near Sigourney. During this visit, Mr. Levetzow observed active open burning. On the southern edge of the grain bins, Mr. Levetzow observed a fire in the burn pit. The items in the pit included landscape waste, trash, metal items, and a microwave. Mr. Levetzow spoke to the person who was on site monitoring the fire. The gentleman informed Mr. Levetzow that he was burning business related waste from Cassens Mill Corp. Mr. Levetzow asked about the non-rubble material from the building in Keswick. The gentleman stated that the material (wood and roofing material) had been brought to this site and burned.

12. On January 7, 2011, DNR issued a Notice of Violation letter to Mr. Cassens for the violations observed by the field office the day before. The violations included improper solid waste disposal and open burning.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). During the August 2010 investigation, DNR personnel observed evidence of open burning of the demolition debris as well as other solid waste. Additionally, during the January 2011 inspection, DNR personnel observed actual open burning of trade waste and other solid waste. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the

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demolition of the building in Keswick. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building in Keswick. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Mr. Cassens was not in compliance with these provisions when the demolition occurred.

7. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During Mr. Burnside's inspection at the Keswick building location in 2009 he found asbestos containing material that had not been removed prior to the demolition. The facts in this case indicate that Mr. Cassens was not in compliance with these provisions.

8. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During Mr. Burnside's inspection at the Keswick building location, he found dry asbestos containing material. The facts in this case indicate that Mr. Cassens was not in compliance with these provisions.

9. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition and disposal of the building despite the fact regulated asbestos containing material was being disturbed by the demolition activities.

10. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During Mr. Burnside's inspection at the Keswick building location, he found asbestos containing material that had not been sealed in

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leak-tight containers. The facts in this case indicate that Mr. Cassens was not in compliance with these provisions.

11. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

12. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. During the August 2010 investigation, DNR personnel observed evidence of open burning as well of burial of the demolition debris at property owned by Mr. Cassens and Cassens Mill Corp. The demolition debris and the other solid waste were either burned or buried rather than being disposed of at a landfill. Additionally, during the January 2011 inspection, DNR personnel observed actual open burning of trade waste and other solid waste. The trade waste and the other solid waste should have been disposed of at a landfill rather than being burned. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Cassens Mill Corp. and Charles Cassens agree to do the following:

1. Cassens Mill Corp. and Charles Cassens shall remove and properly dispose of the solid waste located in the burn pits at the field and elevator locations observed by DNR Field Office 6 on August 11, 2010. The removal and disposal shall be completed within 60 days of the date the Director signs this administrative consent order. The landfill receipts shall be submitted to DNR Field Office 6 within 10 days of the clean-up;
2. Cassens Mill Corp. and Charles Cassens shall cease the use of the burn pits at the field and elevator locations observed by DNR Field Office 6 and fill the burn pits with dirt or rubble within 90 days of the date the Director signs this administrative consent order;
3. Cassens Mill Corp. and Charles Cassens shall ensure the proper disposal of trade waste in the future; and
4. Cassens Mill Corp. and Charles Cassens shall pay a penalty of \$4,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up

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to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,500.00 penalty. Cassens Mill Corp. and Charles Cassens are jointly and severally liable for the payment of the penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the building and the solid waste has allowed Mr. Cassens to save time and money. Mr. Cassens was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and cost of asbestos abatement that Mr. Cassens avoided is \$1,000.00. Significant savings was achieved by burning and burying the building rather than taking it to the landfill as asbestos containing waste. Mr. Cassens avoided landfill fees by burning the debris and trade waste. It is estimated that Mr. Cassens avoided at least \$1,000.00 in landfill fees. Based on the above considerations, \$2,000.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. The sample the DNR collected contained regulated amounts of asbestos;

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therefore the further disturbance of the debris without taking proper precautions threaten the health of the demolition workers as well as the landfill workers. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$1,500.00 is assessed for this factor.


Culpability – Cassens Mill Corp. and Mr. Cassens have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Mr. Cassens had prior knowledge of the regulations prior to the demolition. Additionally, Mr. Cassens was required in 2009 to take the building debris to the landfill as asbestos containing waste. Mr. Cassens was unable to provide any proof that the debris was disposed of properly. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Cassens Mill Corp. and Charles Cassens. For that reason, Cassens Mill Corp. and Charles Cassens waive the right to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
April, 2011.



Charles Cassens

Dated this 29 day of
MARCH, 2011.

Barb Stock (Con 10-6 Keokuk County); Kelli Book; DNR Field Office 6; EPA; VI.C, VII.C.1, and VII.C.4